

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

**Original Application No. 700 of 2006**

Wednesday, this the 5<sup>th</sup> day of November, 2008

**Hon'ble Mr. Justice A.K. Yog, Member (J)**  
**Hon'ble Mr. K.S. Menon, Member (A)**

Qumrul Hasan S/o Late Hasan Mohammad, Presently posted as  
Education Officer Selection Grade at Regional Directorate of  
Allahabad.

**Applicant**

By Advocates: Sri Shyamal Narain  
Sri M.K. Sharma,  
Sri M.H. Khan

**Vs.**

1. Union of India through Secretary, Ministry of Labour & Employment Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Central Board for Workers Education, North Ambazari Road Nagpur 440033 through its Chairman way.
3. Director Central Board for Workers Education North Ambazari Road, Nagpur 440033.
4. Shri V. Parameswaran Director Central Board for Workers Education North Ambazari Road, Nagpur 440033.
5. Shri M.M. Tripathi Additional Director (Retired) Central Board for Workers Education Gorakhpur through Regional Director Office of Regional Directorate Central Board for Workers Education House No. 727 Kaushalendra Niwas Kaisa Road, Mohaddipur Chauraha Gorakhpur-273008 (U.P.)
6. J.S. Pandey Ex Zonal Director (East Zone) service through Regional Director, Central Board for Workers Education 63 ARB Ram Charan Das Road, Balrampur House, Mumfordganj, Allahabad.
7. Shri M.A. Ansari, Ex-Regional Directorate service through Regional Director, Central Board for Workers Education 63 ARB Ram Charan Das Road, Balrampur House, Mumfordganj, Allahabad.

**Respondents**

By Advocate: Sri S.C. Mishra, SSC

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**ORDER****Delivered by K.S. Menon, Member (A)**

This O.A. is filed for quashing the order dated 16/22-05-2006 rejecting the applicant's representation dated 07.12.2005 against denial of promotion to the post of Education Officer Selection Grade w.e.f. 21/24-05-2004, the date from which his juniors were promoted. It is also filed for quashing the order dated 20.03.2002 giving a warning to the applicant and placing the same in his ACR and to direct the respondents to promote the applicant to the post of Education Officer Selection Grade from the date his juniors were promoted with all consequential benefits and to consider him for promotion to the post of Regional Director in the next DPC.

2. The facts of the case leading to filing of this O.A. are that the applicant was selected and appointed on the post of Education Officer on 24.08.1989 at Regional Directorate, Srinagar under the Central Board for Workers Education (CBWE). The applicant alleged that respondent No. 7 was instrumental in his transfer from Allahabad to Amethi and then to Jodhpur (Rajasthan). He further alleges that both respondent No. 5 and 6 concocted allegations against the applicant about his working in Amethi, on the basis of which a show cause notice was issued to him on 01.12.1999 for violation of Rule 3 (1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964 and Board Regulations 24 and 25 of the CBWE (Staff & Conditions of Service) Regulations 1962 (Annexure-4 to the O.A.). The applicant submitted his reply denying all the charges contained in the Notice on 25.12.1999. The Director being satisfied with reply dropped the proceedings as the applicant was not held responsible for any of the charges leveled against him. The applicant submits this finding is substantiated by the certificate he got from the Regional Director on his transfer from Jodhpur to Udaipur and Udaipur to Allahabad regarding his professional competence, field performance and integrity. Regarding the show cause notice, nothing was proved against the applicant and he was promoted to the next higher scale of Rs.6500-200-10500 w.e.f. 11.08.1999 vide order dated 15.12.2001. The applicant contends that this promotion (which was under the Assured Career Progression Scheme (ACP for short) and the Regional Director's certificate proved beyond doubt that the applicant was



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completely exonerated of the charges contained in the show cause notice dated 01.12.1999. Despite this the respondents issued a letter of warning dated 20.03.2001 (alleged by the applicant to be backdated) which was received by him on 15.04.2002 and directed it to be placed in his Dossier (Annexure-8 to the O.A.). The applicant denies that any formal inquiry was held before passing the aforesaid order of Warning besides it is well known that warning is not a punishment as per Regulation 11 of CBWE (Staff & Conditions of Service) Regulations 1962. Therefore placing this order in the ACR was uncalled for as it would adversely affect his chances of promotion. Further issuing a warning so belatedly especially since he was promoted to a higher scale under the ACP scheme in the meantime without an inquiry has denied him an opportunity of defending himself and marred his career by having the warning order placed in his ACR and is therefore illegal, malafide and without jurisdiction and deserves to be quashed.

3. The respondents No. 4 to 7 on the basis of the Order of warning superseded the applicant in the D.P.C. held in 2004 and by Order dated 21/24-05-2004 others including the applicant's juniors were promoted to the post of Education Officer Selection Grade. Being aggrieved the applicant represented on 03/04-08-2004 (Annexure-9 A to the O.A.). The applicant was subsequently promoted to the post of Education Officer Selection Grade on 07.10.2005. He once again represented claiming that his seniority in the promoted post should be reckoned from the date his juniors were promoted i.e. 21/24-05-2004. This representation was rejected by the respondents vide the impugned order dated 16/22-05-2006. He therefore filed this O.A. The applicant has relied on the following Judgments in support of his claim: -

- (i) ***Union of India and others vs. S.P. Singh WP (s) No. 1660 of 2003;***
- (ii) ***AIR 1996 Supreme Court 1661 U.P. Jal Nigam and others vs. Prabhat Chandra Jain & Ors.***
- (iii) ***O.A. No. 181 of 2002 C.A.T. Circuit Bench at Ranchi R.K. Pant Vs. Union of India and others;***

In all the above Judgments, it has generally been held that down gradation of gradings in an ACR should be communicated to the employee and the DPC should not take into consideration such uncommunicated adverse remarks.



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4. The respondents deny all the averments made by the applicant. They submit that the applicant while working at Amethi Sub Regional Centre was issued a show cause notice for trying to bring political and other outside influence on the Administration for his transfer to Allahabad in violation of Rule 20 of the CCS (CCA) Rules, 1964. The explanation given to the aforesaid Memorandum was not satisfactory, he was therefore warned to be more careful in future vide Memorandum dated 31.03.1999 (annexure CA-1). They further contended that the applicant was responsible for non disbursement of payment to the participants in a two days Rural Awareness Camp organized by the applicant. Besides the applicant was also purported to have conducted another two days programme which turned out to be bogus. A memorandum in this regard was issued to him on 01.12.1999 by Director, CBWE for violation of CCS (Conduct) Rules, 1964 and Regulation 24 and 25 of the CBWE (Staff & Conditions of Service) Regulations 1962. The applicant was again warned to be careful in future vide Memorandum dated 20.03.2002 for trying to bring outside influence with regard to his posting, while he was serving at Udaipur. The respondents submit that prior to joining CBWE the applicant was working in the Railways where he was suspended and awarded a punishment for misconduct in 1984 (Para-9 of the O.A.)-a fact which he has concealed in this O.A.

5. The applicant was not found fit for promotion to the post of Education Officer (Selection Grade) in the D.P.C. held on 01.04.2004 as he did not have the prescribed benchmark. He was however placed in the higher pay scale of Rs.6500-200-10500 under the ACP Scheme w.e.f. 11.08.1999 vide Order dated 15.02.2001 (Annexure A-7 to the O.A.). He was also considered by the DPC in 2005 and promoted as Education Officer (Selection Grade) on 07.10.2005.

6. The applicant has filed the instant O.A. to promote him as Regional Director and also restore his seniority in the post of Education Officer Selection Grade w.e.f. 24/24-5-2004 i.e. the date his juniors were promoted. The applicant was considered in the panel drawn for promotion to the only post of Regional Director from amongst Education Officer (Selection Grade). The applicant's request



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for consideration of his promotion to Education Officer Selection Grade from the date his juniors were promoted was not agreed to vide letter dated 16/22-05-2006. Respondents further submit that the applicant should have appealed to respondent No. 2 i.e. the Chairman-the appellate authority or respondent No. 1, which he failed to do. Respondents therefore submit that the applicant has not availed of the remedies available to him under Section 20 of the Administrative Tribunals Act, 1985, hence the present O.A. is premature and liable to be dismissed on this ground alone.

7. Heard Sri Shyamal Narain, learned counsel for the applicant and Shri S.C. Mishra, learned counsel for the respondents and perused the pleadings on record.

8. The main issue for consideration is whether the letter of warning dated 20.03.2002 issued to the applicant should have been placed in his ACR dossier or not and whether the same has been taken note of by the DPC while declaring him unfit for promotion to the post of Education Officer Selection Grade. Relevant portion of the aforesaid letter of Warning is as under: -

**"4. The undersigned visited WEC, Allahabad on 12-13 February, 2002 to inquire into the allegations made against Shri Qamrul Hasan, Education Officer. Besides Shri Qamrul Hasan, all the officers concerned of the Board were also present at Allahabad during the inquiry. The undersigned held detailed discussions with all concerned and studied all the evidences available regarding the allegations. It was found that Shri Qamrul Hasan committed some irregularities, which, however, cannot be treated as of very serious nature. He has admitted himself that he conducted a 2- day programme on 12-13 February 1998 without the approval of Regional Director. Regarding the programme on 25-26 October, 1997. Shri Qamrul Hasan failed to instruct Rural Educator to stop the programme. He also did not take permission of Regional Director for going to Lucknow and for delivering a talk at AIR. Shri Qamrul Hasan paid a visit to Allahabad which was not desirable and he claimed TA for that visit. The findings of the inquiry were submitted to the competent authority, as desired."**

9. It is evident from the above that the respondents themselves did not treat the irregularities committed by the applicant as of a very serious nature. A letter of Warning is not a punishment which is required to be placed in his ACR dossier. The same should have rightly been placed in his Personal file so that the same is not lost sight of. The applicant's claim is that by erroneously placing it in his ACR's file has prejudiced the DPC resulting in his case not being



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considered for promotion to the post of Education Officer Selection Grade. Respondents while denying this have clearly stated that promotion is based on selection and is determined with respect to the relevant benchmark as per DO P & T instructions. The DPC accordingly found the applicant 'unfit' for promotion to the post of Education Officer Selection Grade. While this may be true, it cannot be denied that the letter of warning was placed in his ACR dossier when it was deliberated upon by the DPC. It is no doubt difficult to establish to what extent the DPC, was influenced by the said letter of Warning, it is therefore reasonable to expect that the ACR gradings alone would have played a significant role in the applicant being below the benchmark and consequently being found 'UNFIT'. The respondents on their part have nowhere in the Counter Affidavit or Supplementary Counter Affidavit brought out why in the letter of warning it was mentioned that the same should be placed in the applicant's ACR. Given the nature of the irregularities committed by the applicant, it was just and proper to issue him a letter of warning but placing it in his ACR was too harsh a step taken by the respondents, besides being not as per prescribed rules and despite what the respondents submit, it cannot be said that DPC was not influenced by the said letter of warning. Since the extent cannot be clearly established one way or the other it has to be presumed that this uncalled for action by the respondents has been detrimental to the applicant's interest.

10. The respondents based on the Court's directive have placed before us the original documents pertaining to the DPC proceedings for the year 2004 and 2005 and the ACRs of the applicant from 1998-99 to 2002-03. We have perused these documents in detail. Scrutiny of the same reveals that except for the year 1998-1999 and 2002-2003 in all the other three years, the Reporting Officer has graded the applicant 'Outstanding' but the same have been downgraded to 'Very Good'/'Good' by the Reviewing Officer. The said downgradation has however not been communicated to the applicant to afford him an opportunity to improve and rectify the mistakes so pointed out.

11. The applicant has tried to make out a case that in view of the certificate from the Regional Director (Annexure A-6) and the fact that

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he was given a financial upgradation under the ACP Scheme after taking into account the assessment of the ACR, he could not have been superseded for promotion to the post of Education Officer Selection Grade. This contention is not tenable as it appears very evident that the certificate appears to have been issued at the behest of the applicant. Normally no such certificates are issued to Government servants by their senior officers while in service leave alone reference being made to departmental action taken against the applicant. We therefore take no cognizance of the said letter dated 20.03.2002.

12. On the issue of the financial upgradation under the ACP Scheme, it is relevant to mention that financial upgradation is not a promotion as contended by the applicant, it is given on completion of twelve years regular service i.e. it neither amounts to functional/regular promotion nor would it require creation of new posts for the purpose. The financial upgradation was given to the applicant on 15.02.2001 but w.e.f. 11.08.1999 on completion of twelve years regular service, whereas the show cause notice was issued to him on 01.12.1999, therefore the two issues are totally unconnected, hence the grant of financial upgradation cannot absolve the applicant of the irregularities committed by him subsequently. This contention of the applicant cannot therefore be accepted.

13. The applicant's claim for being considered by the DPC for promotion to the post of Regional Director was also considered by the respondents, as the applicant was the junior most in the list of eligible Educational Officer Selection Grade, he was not selected. The action of the respondents is as per rules and cannot be faulted.

14. The applicant's problem appears to stem from the action of the respondents in issuing him a letter of warning for his acts of omission and commission and then placing the same in his ACR which was uncalled for. The respondents have also not commented on this issue in either their Counter Affidavit or the Supplementary Counter Affidavit for the reasons best known to them. The gradations in the ACR for the five year period (1998-99 to 2002-03) which was considered by the DPC do seem to have taken cognizance of the letter of warning dated 20.02.2006 to the extent that for three



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out of the five years ACR, the Reviewing Officer has downgraded the grading of 'Outstanding' given by the Reporting Officer to 'Very Good' in one year and 'Good' in the other two years. None of these downgradations appear to have been communicated to the applicant. In the year 2000-01, the Reviewing Officer has commented this: -

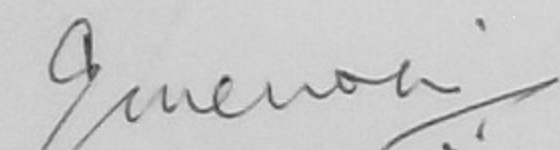
***"He has done nothing which may qualify him for the grading 'Outstanding'. On the contrary so many things in negating has been reported to me orally by the other officers."***

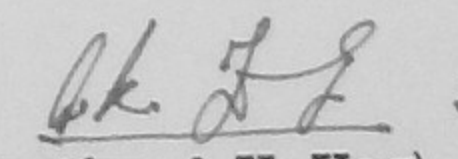
This is a very vague comment on the part of the Reviewing Officer and does not justify downgrading from 'Outstanding' to two steps below to 'Good' especially on the basis of oral reports of other officers.

15. In view of the above, it is seen that the applicant has committed certain irregularities which in the opinion of the respondents themselves is not so serious in nature, however the letter warning him could have been placed in his Personal file instead of his ACR dossier. This has resulted in the applicant being put to a disadvantage when his case was considered for promotion to the post of Education Officer Selection Grade in 2004, this has affected his seniority and consequently his promotion to the post of Regional Director. We are therefore of the opinion that impugned Memorandum dated 20.03.2002 should not be placed in his ACR but in his Personal file.

16. Resultantly we dispose off the O.A. with a direction to the respondents to convene a Review Departmental Promotion Committee meeting to consider the case of the applicant afresh in the light of the observations made above, in accordance with law and as per rules.

17. There shall be no order as to costs.

  
(K.S. Menon)  
Member 'A'

  
(Justice A.K. Yog)  
Member 'J'